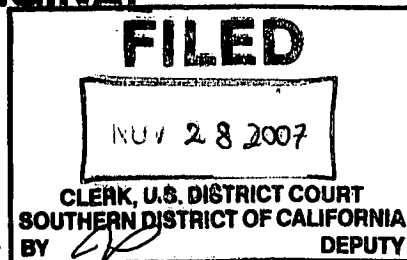


ORIGINAL



07 CV 2251 H

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RONALD PETER LIQUORI, SR.,

Defendant(s).

Case No. 90-CR-1181-K

**DEFENDANT'S FED.R.EVID. 201  
MOTION TO TAKE JUDICIAL NOTICE  
OF THE UNITED STATES SUPREME  
COURT DECISION OF LOPEZ v.  
GONZALES; DEFENDANT'S 18 U.S.C.  
§3582 MOTION TO VACATE, SET  
ASIDE, ALTER, AMEND AND/OR  
CORRECT SENTENCE**

**RONALD PETER LIQUORI, SR.**  
U.S.B.O.P. No. 26246-198  
USP LOMPOC  
UNITED STATES PENITENTIARY  
3901 KLEIN BLVD.  
LOMPOC, CA 93436

**UNITED STATES ATTORNEY**  
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Criminal Division  
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San Diego, CA 92101

*Defendant Pro Per*<sup>1</sup>

*For the United States Government*

This brief is being reviewed by Richard Schonfeld, Esq., of the firm of Chesnoff and Schonfeld, 520 South Fourth Street, Las Vegas, Nevada 89101. Mr. Schonfeld is currently in a high profile federal trial in Las Vegas, Nevada, was unable to complete the review prior to the potential deadlines approaching for the Defendant to file for relief, and advised that the Defendant should seek to preserve the deadlines as necessary pending completion of the review. In the event the District Court is likely to request supplemental briefing and/or to set the matter for evidentiary, and the Federal Public Defender in San Diego (recently successful in a similar matter in the case of the *United States v. Figueroa-Ocampo*) is not appointed, Mr. Schonfeld has indicated his willingness to accept an appointment of counsel.

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1 **MOT**

2 **RONALD PETER LIQUORI, SR.**

3 U.S.B.O.P. No. 26246-198

4 USP LOMPOC

5 UNITED STATES PENITENTIARY

6 3901 KLEIN BLVD.

7 LOMPOC, CA 93436

8 *Defendant Pro Per*

9 **UNITED STATES DISTRICT COURT**

10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 RONALD PETER LIQUORI, SR.,

15 Defendant(s).

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**DEFENDANT'S FED.R.EVID. 201  
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ASIDE, ALTER, AMEND AND/OR  
CORRECT SENTENCE**

16 **COMES NOW**, Defendant, **RONALD PETER LIQUORI, SR.**, and does respectfully  
17 request pursuant to Fed.R.Evid. 201(b), (d) & (f) , that this Honorable Court enter an Order to  
18 take judicial notice of the decision of the United States Supreme Court in *Lopez v. Gonzales*,  
19 U.S.Sup.Ct. No. 05-547, 549 U.S. \_\_\_\_; 127 S. Ct. 625 (Decided: Dec. 5, 2006), and of the  
20 decision by the United States Court of Appeals for the Ninth Circuit in *United States v. Figueroa-*  
21 *Ocampo*, \_\_\_\_ F.3d \_\_\_\_ (9<sup>th</sup> Cir. 2007 - Mandate Filed October 9, 2007 United States District  
22 Court for the District of Southern California in San Diego Case No. CR-03-1112-MLH).

23 Defendant further requests that on the taking of judicial notice, this Honorable Court enter  
24 an Order pursuant to 18 U.S.C. §3582, to vacate, set aside, alter, amend and/or correct sentence  
25 entered on December 19, 1991.

26 This Motion is made and based on the memorandum of points and authorities attached  
27 hereto and made a part hereof by reference, and the documents, papers and pleadings on file  
28 herein with the Clerk of the Court.

DATED this 13<sup>th</sup> Day of November, 2007.

**FOR THE DEFENDANT**

  
**RONALD PETER LIQUORI, SR.**

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Factual Background and Procedural History**

3 The factual background and procedural history are recited below.

4 ***A. Investigation***

5 Based upon information supplied by a confidential source, the San Diego County  
6 Sheriff; D.E.A., A.T.F., and U.S. Attorney's Offices initiated an investigation into an alleged  
7 operation of purported clandestine methamphetamine laboratories. The investigation alleged to  
8 have revealed a purported operation: (1) to manufacture methamphetamine; (2) to distribute  
9 methamphetamine to "... Hell's Angels member"<sup>2</sup> LIQUORI, SR.; (3) to receive and distribute  
10 large quantities of methamphetamine from other methamphetamine cooks; to purchase precursor  
11 chemicals for the manufacture of methamphetamine; and to demonstrate force and violence to  
12 ensure continued availability of methamphetamine to the conspirators, including the possession  
13 of weapons to protect and enforce the object of the conspiracy.

14 According to the investigation, the operation began sometime in late 1988 or early  
15 1989, when Carla Dodson allegedly asked Liquori, Jr. and LIQUORI, SR. to assist in moving  
16 items from the storage locker of Michael Cervantes. The items were purported to be cooking  
17 equipment and chemicals. Dodson allegedly promised the Liquoris, that if they helped her, she  
18 would give them equipment and teach Liquori, Jr. how to manufacturer methamphetamine.  
19 According to trial testimony, the Liquoris agreed and removed three (3) complete lab set-ups and  
20 chemicals from the storage locker. Thereafter, Dodson agreed to give the Liquoris some  
21 "product" whenever she manufactured methamphetamine. As promised, Dodson provided a  
22 portion of the methamphetamine yield to the Liquoris in 1989.

---

23  
24 <sup>2</sup> Although not a separate issue in this instant motion, it should be noted as a part of the cumulative effect and  
25 error, that contemporaneous with the original case, *Dawson v. Delaware*, 503 U.S. 159, 112 S. Ct. 1093 (1991)  
26 reversed convictions for first degree murder, when the defendants' First and Fourteenth Amendment rights were  
27 violated by admitting evidence of membership in alleged gang related activities. 112 S. Ct. at 1099. In  
28 LIQUORI, SR.'s case, membership in the Hells Angels was alleged but never charged in the Indictment or  
Superseding Indictment, nor conviction found under either VIPER or RICO acts, nor was the membership an  
element of any offense that was required to be proven at trial. Even the illicit search of the Hells Angels  
clubhouse in San Diego failed to locate any controlled substances or precursor chemicals on the premises. As  
such the constant reference was not only immaterial, but more prejudicial than probative, and should have been  
excluded.



1 The Indictment, and later trial testimony, alleged that Liquori, Jr. was involved  
2 in more than one (1) manufacturing operation. For approximately six (6) months in 1989, the  
3 allegation was that Liquori, Jr. had participated in manufacturing operations at twelve (12) to  
4 fourteen (14) other locations. In 1990, it was also alleged that methamphetamine manufacturing  
5 took place at the various residences of the coconspirators. Purportedly, Liquori, Jr. supplied the  
6 operation with precursor chemicals and equipment in return for a portion of the finished product.  
7 According to the affidavits in support of search warrants, sometime in February or March 1990,  
8 the alleged coconspirators all pooled their funds so that the operation could acquire fifty-five (55)  
9 pounds of ephedrine to continue the operation.

10 ***B. Search Warrants***

11 Eventually the investigation led to the May 4, 1990 arrest of Edwin Trout for drug  
12 violations. Trout cooperated, and on May 11, 1990, two (2) search warrants were issued - one for  
13 the residence of Carla Dodson on Helix Street, and the other for the residence of Karen Archer  
14 on Stansbury Street. Agents searched a shed on the Helix property and found chemicals used in  
15 manufacturing methamphetamine, gas masks and rags containing methamphetamine hydriodide.

16 LIQUORI, SR. did not reside at either address, but lived at a separated mobile  
17 home on another portion of the property connected to Helix Street. Nevertheless, agents searched  
18 LIQUORI, SR.'s motor home and seized two (2) firearms, a box of ammunition and a device  
19 purportedly used to detect hidden radio frequencies (a "bug detector"). On August 1, 1990,  
20 federal agents executed another search warrant at the Hell's Angels' clubhouse in San Diego. The  
21 agents found LIQUORI, JR.'s possessions in the clubhouse,<sup>3</sup> but no controlled substances or  
22 precursor chemicals.

23 ***C. Indictment and District Court Procedural History***

24 On November 27, 1990, a federal grand jury in the Southern District of California  
25 returned an Indictment against Ronald Liquori, Sr. ("LIQUORI, SR."), Ronald Liquori, Jr., David  
26

---

27 <sup>3</sup> The first 302 documents in this case are sealed and unavailable for public viewing, thus it is unclear if the search  
28 warrants and supporting affidavits were ever examined for accuracy, scope and location, or whether or not a  
proper motion to suppress the tainted evidence seized from the inappropriate searches was ever filed or  
adjudicated.

1 Ayala, Carla Dodson, Karen Archer, Jesse Portillo, Michael Cervantes, Marcel Becker, and Linda  
 2 McMuny. On December 6, 1990, LIQUORI, SR. was arrested (and has remained in custody since  
 3 that date).<sup>4</sup> On February 21, 1991, the grand jury returned a Superseding Indictment<sup>5</sup> against the  
 4 defendants, with the charges applicable to LIQUORI, SR.:

Superseding Indictment Count	U.S. Code Title	Title Section	Description
Count 1	21 U.S.C.	§846 §841(a)(1)	Conspiracy to Manufacture and Possession of Methamphetamine with Intent to Distribute
Count 2 Count 3	21 U.S.C. 18 U.S.C.	§846 §841(a)(1) §2	Manufacture and Attempted Manufacture of Methamphetamine
Count 4	21 U.S.C. 18 U.S.C.	§841(d)(1) §802(33) §802(34) §2	Aiding and Abetting the Possession of a Listed Chemical with Intent to Manufacture Methamphetamine
Count 6	18 U.S.C.	§922(g)(1) §924(a)	Felon in Possession of a Firearm
Count 7	18 U.S.C.	§922(g)(1) §924(a)	Felon in Possession of a Firearm
Count 8	18 U.S.C.	§922(g)(3) §924(a)	Unlawful User of Controlled Substance in Possession of a Firearm
Count 9	18 U.S.C.	§922(g)(3) §924(a)	Unlawful User of Controlled Substance in Possession of a Firearm

15  
 16 At LIQUORI, SR.'s arraignment, attorney Richard Boesen was appointed as  
 17 LIQUORI, SR.'s first defense counsel. On March 11, 1991, the district court conducted a hearing  
 18 in response to a letter from LIQUORI, SR. requesting new counsel. Although the district court  
 19 did not affirm any of LIQUORI, SR.'s claims, it granted LIQUORI, SR.'s motion and appointed  
 20 new counsel, Mr. Frank Murphy.

21 On March 18, 1991, the district court conducted a hearing on LIQUORI, SR.'s  
 22 motion for severance. The district court denied the motion to sever, holding that the proffered  
 23 co-defendant exculpatory testimony did not warrant severance. On April 15, 1991, the district  
 24 court granted co-defendant Becker's motion for severance which was based on an exculpatory  
 25 affidavit filed by LIQUORI, SR.

26 On June 5, 1991, LIQUORI, SR. advised the district court that he no longer

27 <sup>4</sup> Total 203 months incarceration to date.

28 <sup>5</sup> Exhibit No. 1 - Superseding Indictment.

1 wanted Mr. Murphy to represent him, because he believed that Mr. Murphy was lying to him.  
2 LIQUORI, SR. requested the district court appoint a third attorney to represent him. After hearing  
3 LIQUORI, SR.'s reasons, the district court denied the request. The district court then considered  
4 and denied LIQUORI, SR.'s renewed motion for severance. Before trial, the government made  
5 one "package plea" offer to LIQUORI, SR. and the co-defendants who remained in the case. The  
6 co-defendants, however, rejected the offer. LIQUORI, SR. and the co-defendants were scheduled  
7 for trial.

8           On June 18, 1991, LIQUORI, SR. was served with a 21 U.S.C. §841, §851 notice  
9 that, in the event LIQUORI, SR. was found guilty of Counts 1 or 2 of the Superseding Indictment,  
10 the mandatory sentence would be life imprisonment, a fine of \$8,000,000 and ten (10) years of  
11 supervised release. The notice further stated that in the event LIQUORI, SR. was found guilty  
12 of Count 3, the mandatory sentence was ten (10) years imprisonment, a fine of \$4,000,000 and  
13 eight (8) years of supervised release. The notice was predicated on the belief by the government  
14 that LIQUORI, SR. had sustained two (2) prior felony drug related convictions in the State of  
15 California, Case No. CR58321, and CR 58779,<sup>6</sup> two (2) related and concurrent matters for which  
16 the punishment, under California law at that time, was a term which may be served in either the  
17 county jail or state prison.

18           On the morning of trial, just before jury selection, the Court considered another  
19 request from LIQUORI, SR. for appointment of new counsel. After hearing LIQUORI, SR.'s  
20 argument, the Court denied the request. On July 11, 1991, following a three-week trial, during  
21 which the Court again considered and denied LIQUORI, SR.'s request for new counsel,  
22 LIQUORI, SR. was found guilty on Counts 1, 2, 3, 4, 6 and 8; conspiracy to manufacture and  
23 possess methamphetamine with intent to distribute and of manufacture and attempted  
24 manufacture of methamphetamine in violation of 21 U.S.C. §846 and §841(a)(1); aiding and  
25 abetting the possession of a listed chemical with intent to manufacture methamphetamine in  
26 violation of 21 U.S.C. §841(d)(1), §802(33) and §802(34)(c); being a felon in possession of a

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27  
28 <sup>6</sup> Exhibit No. 2 - Notice with Attached Abstract of Judgment.

1 firearm in violation of 18 U.S.C. §922(g)(1) and §924(a);<sup>7</sup> and being an unlawful user of a  
 2 controlled substance in possession of a firearm in violation of 18 U.S.C. §922(g)(3). LIQUORI,  
 3 SR. was acquitted on Counts 7 and 9. On July 24, 1991, before sentencing, the Court granted  
 4 LIQUORI, SR.'s request for new counsel and subsequently appointed Mr. Douglas Brown as  
 5 LIQUORI, SR.'s counsel. On December 16, 1991, the Court heard and denied LIQUORI, SR.'s  
 6 motion for a new trial.

#### 7 **D. Sentencing**

8 On December 18, 1991, the government argued that the two (2) previous state  
 9 felony drug convictions established LIQUORI, SR.'s eligibility for sentence enhancement under  
 10 21 U.S.C. §841(a)(1)(A) & (b)(1)(A). The first conviction arose out of LIQUORI, SR.'s arrest  
 11 on April 8, 1982 for dissuading a witness.<sup>8</sup> While being booked into the local county jail on the  
 12 charges, a plastic bag containing methamphetamine was allegedly found in LIQUORI, SR.'s  
 13 jacket. The second drug offense occurred on May 3, 1982 when a police officer allegedly found  
 14 methamphetamine in LIQUORI, SR.'s car during a routine traffic stop for "vehicle equipment  
 15 violations". On September 16, 1982, following a jury trial, LIQUORI, SR. was convicted in the  
 16  
 17  
 18

---

19 <sup>7</sup> 18 U.S.C. §924(g) It shall be unlawful for any person - (1) who has been convicted in any court of, a crime  
 20 punishable by imprisonment for a term exceeding one year; . . . (3) who is an unlawful user of or addicted to  
 21 any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. §802) . . . to  
 22 ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or  
 23 ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or  
 24 foreign commerce . . . [as defined by §921(a)(2) [t]he term "interstate or foreign commerce" includes commerce  
 between any place in a State and any place outside of that State, or within any possession of the United States  
 (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between  
 places within the same State but through any place outside of that State. The term "State" includes the District  
 of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the  
 Canal Zone)] . . .

25 <sup>8</sup> The federal crime of dissuading a witness, 18 U.S.C. §1502, did not exist until one month after LIQUORI, SR.'s  
 26 conviction of the state offense, the importance of which will be more fully explained later in this brief. See Pub.  
 27 L. 97-291, § 4(a), Oct. 12, 1982, 96 Stat. 1249; amended Pub. L. 99-646, § 61, Nov. 10, 1986, 100 Stat. 3614;  
 28 Pub. L. 100-690, title VII, § 7029(a), (c), Nov. 18, 1988, 102 Stat. 4397, 4398; Pub. L. 101-650, title III, § 321,  
 Dec. 1, 1990, 104 Stat. 5117; Pub. L. 103-322, title VI, § 60018, title XXXIII, § 330016(1)(O), (U), Sept. 13,  
 1994, 108 Stat. 1975, 2148; Pub. L. 104-214, § 1(2), Oct. 1, 1996, 110 Stat. 3017; Pub. L. 104-294, title VI,  
 604(b)(31), Oct. 11, 1996, 110 Stat. 3508; Pub. L. 107-204, title XI, § 1102, July 30, 2002, 116 Stat. 807; Pub.  
 L. 107-273, div. B, title III, § 3001(a), (c)(1), Nov. 2, 2002, 116 Stat. 1803, 1804.

1 first case of two counts of witness intimidation and one count of felony drug possession.<sup>9</sup>  
 2 Thereafter, LIQUORI, SR. pleaded guilty to the second felony drug possession on September 21,  
 3 1982. LIQUORI, SR. was sentenced in each case on December 10, 1982. In the first state case,  
 4 LIQUORI, SR. was sentenced to three (3) years for each count of dissuading a witness, with a  
 5 two (2) year concurrent sentence for possession of a controlled substance.<sup>10</sup> In the second state  
 6 case, LIQUORI, SR. received a two (2) year sentence to run concurrently with the sentence in  
 7 the first state case. The cases were adjudicated concurrent and consolidated for the state appeal.  
 8 LIQUORI, SR. has no other convictions which would constitute predicate offenses under 18  
 9 U.S.C. §841(b)(1)(A).

10 The district court found that Liquori had two (2) prior convictions for felony drug  
 11 offenses and sentenced him to a mandatory term of life imprisonment under 21 U.S.C.  
 12 §841(b)(1)(A), on Counts 1, 2 and 3 of the Superseding Indictment, and to ten (10) years  
 13 imprisonment on Counts 4, 6 and 8, all to be served concurrently.<sup>11</sup> The Court also sentenced  
 14 LIQUORI, SR. to ten (10) years of supervised release and imposed a penalty of \$300.

#### 15 *E. Direct Appeal and §2255 Petition*

16 LIQUORI, SR. then appealed, raising various issues, including those claims on  
 17 which he moved for a new trial, and the assertion that his prior felony drug convictions should  
 18 be treated as a single conviction for purposes of sentence enhancement under §841(b)(1)(A), in  
 19 light of the fact that the sentence was imposed on the same day, with the same judge, and

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20 <sup>9</sup> Cal. H&S Code 11377(a) Except as otherwise provided in subdivision (b) or in Article 7 (commencing with  
 21 Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any  
 22 controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, except  
 23 subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14),  
 24 (15), and (20) of subdivision (d), (3) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (4)  
 25 specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist,  
 26 podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in the county jail  
 27 for a period of not more than one year or the state prison. (b) Any person who violates subdivision (a) by  
 28 unlawfully possessing a controlled substance specified in subdivision (f) of Section 11056, and who has not  
 previously been convicted of such a violation involving a controlled substance specified in subdivision (f) of  
 Section 11056, is guilty of a misdemeanor.

<sup>10</sup> In 1981 and through the end of 2006, the state charge of "possession of a controlled substance" equated to a  
 misdemeanor under the Federal Controlled Substances Act. 21 U.S.C. §844(a).

<sup>11</sup> These sentences are discharged, and while some factors will be argued in context of resentencing, the  
 convictions pertaining to these counts are not being challenged.

1 constituted a single concurrent conviction which was also consolidated on appeal.<sup>12</sup> The Ninth  
 2 Circuit rejected LIQUORI, SR.'s arguments and affirmed his conviction in both a memorandum  
 3 and published decision. *United States v. Liquori*, 5 F.3d 435,437 (9<sup>th</sup> Cir.1993) (“[P]rior  
 4 convictions should only be considered for purposes of enhancement under section 841(b)(1)(A)  
 5 if they constitute separate criminal episodes rather than a single act of criminality.”), *cert. denied*,  
 6 \_\_\_ U.S. \_\_\_, 114 S.Ct. 738 (1994).

7 In making this decision, the Ninth Circuit did note, that while no formal  
 8 consolidation order had been entered by the lower state court, LIQUORI, SR.'s prior convictions  
 9 could arguably have been treated as “consolidated for sentencing” if he had been sentenced under  
 10 the guidelines. *See e.g., United States v. Bachiero*, 969 F.2d 733, 734 (9<sup>th</sup> Cir. 1992). “**However,**  
 11 **since [LIQUORI, SR.’s] sentence was imposed according to the statutory minimum required**  
 12 **by 21 U.S.C. §841(b)(1)(A), this guideline section is not applicable.”** *United States v. Liquori*,  
 13 5 F.3d at 437 (emphasis added).

14 On June 9, 1997, LIQUORI, SR., submitted a petition under 28 U.S.C. §2255, to  
 15 vacate, set aside or correct his sentence, which was denied on November 3, 1997. LIQUORI, SR.  
 16 appealed, and the decision was affirmed.

### 17 Analysis and Applicable Law

#### 18 I. Applicability of Judicial Notice

19 Federal Rules of Evidence 201(b), (d) & (f) provide that a court shall take judicial notice  
 20 of a matter of a fact and/or public record “not subject to reasonable dispute in that it is either: (1)  
 21 generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and  
 22 ready determination by resort to sources whose accuracy cannot be reasonably questioned[]”,  
 23 Fed.R.Evid. 201(b), and the necessary information is provided, Fed.R.Evid. 201(d).

25 <sup>12</sup> USSG §4A1.2. Definitions and Instructions for Computing Criminal History

26 (a) Prior Sentence Defined

27 (1) The term “prior sentence” means any sentence previously imposed upon adjudication of guilt, whether  
 by guilty plea, trial, or plea of nob contendere, for conduct not part of the instant offense.

28 (2) Prior sentences imposed in unrelated cases are to be counted separately. Prior sentences **imposed in  
 related cases are to be treated as one sentence for purposes of §4A1.1(a), (b) & (c).** (emphasis added)



1 Judicial notice may be taken at any stage in the proceeding, Fed.R.Evid. 201(f). Judicial  
 2 notice of United States Supreme Court precedent, law, legislative facts, or factual matters is  
 3 proper where there is no dispute as to the authenticity of those matters. *Lee v. City of Los*  
 4 *Angeles*, 250 F.3d 668, 689 (9<sup>th</sup> Cir. 2001). See also *Oneida Indian Nation of New York v. New*  
 5 *York*, 691 F.2d 1070, 1086 (2<sup>nd</sup> Cir. 1982), and *Zimomra v. Alamo Rent-A-Car, Inc.*, 111 F.3d  
 6 1495, 1503 (10<sup>th</sup> Cir. 1997).

7 In *Lopez*, the United States Supreme Court has issued a ruling that will have a direct and  
 8 very undeniable impact on the advisory United States Sentencing Guidelines ("U.S.S.G."). This  
 9 impact will most certainly result in new amendments to the manner in which the U.S.S.G. is  
 10 applied<sup>13</sup> - particularly in connection with 21 U.S.C. §841(a)(1)(A) & (b)(1)(A) and U.S.S.G.  
 11 §2D1.1(a)(1)-(3), with a reasonable and foreseeable lowering of guideline ranges, 18 U.S.C.  
 12 §3852(c)(2) and U.S.S.G. §1B1.10(a).<sup>14</sup> Accordingly, the district court can and must consider the  
 13 impact of the *Lopez* case in deciding LIQUORI, SR's request under 18 U.S.C. §3852(c)(2).

## 14 **II. Defendant's Request Pursuant to 18 U.S.C. §3852 and Applicability of Lopez**

15 *Lopez* was decided on December 5, 2006, and held that conduct made a felony under state  
 16 law, but a misdemeanor under the Controlled Substances Act is not a "felony punishable under  
 17 the Controlled Substances Act" ("CSA") and cannot be used for the purpose of enhancing a  
 18 sentence for violation of the Controlled Substances Act as an aggravated felony. The Ninth  
 19 Circuit, in the case of *United States v. Figueroa-Ocampo*, \_\_\_ F.3d \_\_\_ (9<sup>th</sup> Cir. 2007), agreed.

20 On June 18, 1991, LIQUORI, SR. received notice that he was subject to a life sentence

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21 <sup>13</sup> *Lopez* has been included in the January 30, 2007 *Proposed Amendments to the Sentencing Guidelines* (pg. 170),  
 22 and has been published at 72 Fed.Reg. 4372:

23 *The Commission requests comment regarding the Supreme Court's decision in Lopez v. Gonzalez,*  
 24 *126 S.Ct. 625 (Dec. 5, 2006). In Lopez, the Supreme Court held that state drug convictions for*  
 25 *conduct treated as a felony by the state, but as a misdemeanor under the federal Controlled*  
 26 *Substances Act, do not constitute aggravated felonies [...] . Given that the guidelines reference*  
 27 *the statutory definition of "aggravated felony," the Commission requests comment regarding*  
 28 *whether the guidelines should be amended . . . in light of Lopez v. Gonzalez?*

26 <sup>14</sup> §1B1.10. Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)  
 27 (a) Where a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant  
 28 has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection  
 (c) below, a reduction in the defendant's term of imprisonment is authorized under 18 U.S.C. §3582(c)(2).  
 . . . .

1 on Counts 1 and 2 because of the belief that LIQUORI, SR. had “*committed the offense after one*  
 2 *or more prior convictions for a similar offense*” in the State of California, Case No.’s CR58321,  
 3 and CR 58779 (two related and concurrent matters). The phrase “*for a similar offense*” leads to  
 4 the reasonable argument that the offense reference would “... *proscribe[] conduct punishable*  
 5 *as a felony under the CSA.*” *Lopez*, supra. Subsequent to the guilty verdict, the district court,  
 6 at sentencing for Counts 1, 2 and 3, automatically set LIQUORI, SR. at Base Offense Level 43,<sup>15</sup>  
 7 and Criminal History Category VI (U.S.S.G. Chapter 4, Career Offender), U.S.S.G. §4B1.1,  
 8 *United States v. Liquori*, 5 F.3d at 437 and sentenced LIQUORI, SR. to life imprisonment.

9 LIQUORI, SR. contends that the sentence of life imprisonment on Counts 1, 2, 3 were  
 10 unconstitutionally enhanced.<sup>16</sup> Examining first LIQUORI, SR.’s 1981 state convictions for  
 11 possession under the California Health and Safety Code §11377(a), one finds that the  
 12 convictions are for simple possession of a controlled substance with no denotation of quantity of  
 13 substance possessed. As noted in *Lopez*, mere possession of a controlled substance is not a felony  
 14 under the federal CSA, see 21 U. S. C. §844(a), not now and certainly not in 1981, and should  
 15 not have been used to enhance LIQUORI, SR.’s sentence under 21 U. S. C. §841(a) - (b).

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17 <sup>15</sup> At the time of the entry of the judgment of conviction and sentence, there was no Guideline section pertaining  
 18 to quantity of chemical or finished substance that could apply to LIQUORI, SR. Amendment 505 effective 1 Nov  
 19 1995 reduced non-career criminal and non-injurious levels of controlled substance offenses to a Base Offense  
 20 Level of 36. See also 21 U.S.C. §841.

21 §2D1.1. Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to  
 22 Commit These Offenses); Attempt or Conspiracy

(a) Base Offense Level (Apply the greatest):

- 23 (1) 43, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(c), or 21 U.S.C.  
 24 § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily  
 25 injury resulted from the use of the substance and that the defendant committed the offense after one  
 26 or more prior convictions for a similar offense; or  
 (2) 38, if the defendant is convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), or (b)(1)(c), or 21 U.S.C.  
 § 960(b)(1), (b)(2), or (b)(3), and the offense of conviction establishes that death or serious bodily  
 injury resulted from the use of the substance; or  
 (3) the offense level specified in the Drug Quantity Table set forth in subsection (c), except that if (A) the  
 defendant receives an adjustment under §3B1.2 (Mitigating Role); and (B) the base offense level under  
 subsection (c) is (i) level 32, decrease by 2 levels; (ii) level 34 or level 36, decrease by 3 levels; or (iii)  
 level 38, decrease by 4 levels.

27 . . . .

28 <sup>16</sup> Count 3 was never included on the required 21 U.S.C. §841, §851 notice. Under *United States v. LaBonte*, 520  
 U.S. 751, 117 S. Ct. 1673 (1997), the failure to provide notice automatically excludes this count from any life  
 sentence enhancement.



1 Despite this federal misdemeanor treatment, the government will attempt to argue that the  
 2 felonious character of LIQUORI, SR.'s state convictions for possession can turn them into  
 3 aggravated felonies under the CSA, 21 U. S. C. §801 et seq., 18 U.S.C. §924(a) & (c)(2). Yet, the  
 4 CSA has always punished simple possession as a misdemeanor, see 21 U.S.C. §405(a), 102 Stat.  
 5 4384, as renumbered and amended by 104 Stat. 4828, 21U. S. C. §844(a), 18 U. S. C. §3559(a).  
 6 "Unless a state offense is punishable as a federal felony it does not count." *Id.*

7 The debate has now been resolved. "[A] state offense constitutes a 'felony punishable under the  
 8 Controlled Substances Act' only if it proscribes conduct punishable as a felony under that federal  
 9 law." *Lopez v. Gonzales*, 2006 WL 3487031 (S.Ct., Dec. 5, 2006). The *Lopez* decision controls  
 10 here. We have held that cases interpreting statutes are "fully retroactive because they do not change  
 11 the law, but rather explain what the law has always meant." *United States v. Rivera-Nevarez*, 418  
 12 F.3d 1104, 1107 (10<sup>th</sup> Cir. 2005). . . . "[W]e must interpret the statute consistently, whether we  
 13 encounter its application in a criminal or noncriminal context . . . ." *Leocal v. Ashcroft*, 543 U.S.  
 14 1, 11 n.8 (2004). "The Court in *Lopez* made it clear that its holding was not limited [], we  
 15 conclude. In addressing and rejecting an argument made by the government in *Lopez*, the Court  
 16 said that the reading of the statute the government was proposing would make federal law . . . and  
 17 []the law of sentencing . . . dependent on varying state criminal classifications in contravention  
 18 of Congressional intent. *Lopez*, 2006 WL 3487031 at 6."<sup>17</sup>

19 The issue is one of fundamental fairness and due process, both of which were denied by  
 20 the improper application of prior convictions which constituted misdemeanor offenses under the  
 21 Controlled Substances Act, and the entry of a sentence of life imprisonment based upon a  
 22 materially untrue foundation. This requires the sentences on Counts 1, 2 and 3 to be vacated and  
 23 set for resentencing.

24 **III. LaBonte, Read in Light of Lopez, Prohibits Consideration of Career Offender**  
 25 **Status on Resentencing**

26 In *United States v. LaBonte*, 520 U.S. 751, 117 S. Ct. 1673 (1997), the United States  
 27 Supreme Court decided that the Sentencing Commission's amendment to the commentary on  
 28 career offender provision of U.S.S.G. §4B1.1 was held to be in conflict the Congressional intent  
 of 28 U.S.C. §994(h). In rendering this holding, the Court began with an explanation of the  
 history of the U.S.S.G.

In 1984, Congress created the Sentencing Commission and charged it with "establishing  
 sentencing policies and practices for the Federal criminal justice system." 28 U.S.C. §991; see

<sup>17</sup> *Gonzalez-Gonzalez v. Weber*, \_\_\_ F.3d \_\_\_ (10<sup>th</sup> Cir. No. 04-1181, Dec: 12/27/2006).

1 *Mistretta v. United States*, 488 U.S. 361, 367-370, 109 S. Ct. 647 (1989). The Commission,  
 2 however, was not granted unbounded discretion. Instead, Congress articulated general goals for  
 3 federal sentencing and imposed upon the Commission a variety of specific requirements. See  
 4 §994(b)-(n). The Commission sought to implement this directive by promulgating the "Career  
 5 Offender Guideline," which created a table of enhanced total offense levels to be used in  
 6 calculating sentences for "career offenders." *United States Sentencing Commission, Guidelines*  
 7 *Manual §4B1.1* (Nov. 1987).

8 When the Commission coined the phrase "offense statutory maximum," the term was  
 9 defined, inartfully, as "the maximum term of imprisonment authorized for the offense of  
 10 conviction."<sup>18</sup> Neither the Career Offender Guideline itself, however, nor the accompanying  
 11 commentary, designated which "maximum term" was to be used when a federal law passed by  
 12 Congress established the statutory maximum term of imprisonment for persons convicted of a  
 13 particular offense, and provided specific statutory requirements for an enhanced maximum  
 14 penalty for career offenders convicted of that same offense.<sup>19</sup>

15 The Courts of Appeals, required to choose between sentencing "at or near the maximum"  
 16 of the base sentence, or of the base sentence plus the relevant statutory enhancements, uniformly  
 17 concluded that the "offense statutory maximum" for a defendant with prior convictions was the  
 18 statutory maximum term enacted by Congress<sup>20</sup> while giving somewhat differing interpretations  
 19 as to how this conclusion should be viewed through the prism of the Guidelines. In response, the  
 20 Commission subsequently amended the Career Offender Guideline's commentary to preclude  
 21 consideration of statutory enhancements in calculating the "offense statutory maximum." In  
 22 essence, this change allowed the Guidelines to increase a term of imprisonment beyond the

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23 <sup>18</sup> U.S.S.G. App. C, Amend. 267 (Nov. 1989) (adding §4B1.1, comment., n.2).

24 <sup>19</sup> We note that imposition of an enhanced penalty is not automatic. Such a penalty may not be imposed unless the  
 25 Government files an information notifying the defendant in advance of trial (or prior to the acceptance of a plea)  
 26 that it will rely on that defendant's prior convictions to seek a penalty enhancement. 21 U.S.C. § 851(a)(1). If  
 27 the government does not file such notice, however, the lower sentencing range will be applied even though the  
 28 defendant may otherwise be eligible for the increased penalty.

<sup>20</sup> See *United States v. Smith*, 984 F.2d 1084, 1087 (10<sup>th</sup> Cir. 1993), *cert. denied*, 510 U.S. 873 (1993); *United*  
*States v. Garrett*, 295 U.S. App. D.C. 1, 959 F.2d 1005, 1009-1011 (DC Cir. 1992); *United States v. Amis*, 926  
 F.2d 328, 329-330 (3<sup>rd</sup> Cir. 1991); *United States v. Sanchez-Lopez*, 879 F.2d 541, 558-560 (9<sup>th</sup> Cir. 1989).

1 statutory maximum enacted by Congress. Pursuant to its authority under 28 U.S.C. §994(u), in  
 2 the extremely rare instance where Amendment 506 provided for a lesser term of imprisonment,  
 3 the Commission gave Amendment 506 retroactive effect, and provided sentencing courts, where  
 4 applicable, with the discretion to reduce sentences imposed before the amendment's November  
 5 1, 1994, effective date.<sup>21 22</sup>

6 Analogous to the instant case, and prior to the adoption of Amendment 506, in *LaBonte*,  
 7 three (3) men, *LaBonte*, *Hunnewell* and *Dyer* were convicted of various federal controlled  
 8 substance offenses in the United States District Court for the District of Maine. Each man: (1)  
 9 qualified as a career offender under U.S.S.G. §4B1.1(Nov. 1987); (2) received the required notice  
 10 that an enhanced penalty would be sought; and (3) was sentenced under the Career Offender  
 11 Guideline using the enhancement. The United States Court of Appeals for the First Circuit  
 12 affirmed each conviction and sentence (19 F.3d 1427; 10 F.3d 805; 9 F.3d 1).

13 Subsequently, the Sentencing Commission adopted Amendment 506, and each of the three  
 14 (3) men sought a reduction in his sentence. In the cases of *Dyer* and *Hunnewell*, a judge of the  
 15 district court refused to reduce the sentences, interpreting Amendment 506 as contrary to 21  
 16 U.S.C. §841(a)(1) & (b)(1)<sup>23</sup> and 28 U.S.C. §994(h). In *LaBonte's* case, however, a different  
 17 judge of the same district court upheld the validity of Amendment 506 and reduced the sentence  
 18 (885 F.Supp. 19) after interpreting the amendment to read that a sentence must conform with the  
 19 sentence authorized by Congress and statute, and in the event of a conflict, the maximum  
 20 sentence authorized by Congress would control.

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21  
 22 <sup>21</sup> Rejecting the prevailing wisdom, the Commission defined the phrase "offense statutory maximum" as:

23 [T]he maximum term of imprisonment authorized for the offense of conviction that is a  
 24 crime of violence or controlled substance offense, not including any increase in that  
 25 maximum term under a sentencing enhancement provision that applies because of the  
 26 defendant's prior criminal record . . . ." U.S.S.G. App. C, Amend. 506 (Nov. 1994)  
 (amending U.S.S.G. §4B1.1, comment., n.2).

27 <sup>22</sup> U.S.S.G. §1B1.10(c) (Nov. 1996).

28 <sup>23</sup> Which in *LIQUORI, SR.*'s case established base penalties of 10 years' imprisonment, 20 years' imprisonment  
 when the drug trafficking resulted in the death of a user, and an enhanced penalty of life imprisonment for  
 qualifying repeat offenders.

1 The First Circuit consolidated the ensuing appeals and a divided panel, applying the  
 2 approach set forth in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S.  
 3 837, 104 S. Ct. 2778 (1984), upheld the view that Amendment 506 was an appropriate exercise  
 4 of the Commission's discretion, *LaBonte*, 70 F.3d 1396, 1403-1409 (1<sup>st</sup> Cir. 1995), and controlled  
 5 when in direct conflict with a term imposed by statute. On certiorari, the United States Supreme  
 6 Court held instead that the phrase "maximum term authorized" in §994(h) had to be read to mean  
 7 the highest or greatest sentence authorized by Congress and statute, which already included all  
 8 applicable sentencing enhancements, "since this represents the highest possible sentence  
 9 applicable to all defendants in the category[]", *Id.*, at 1405,<sup>24</sup> and not the statutory maximum term  
 10 upon which the Guidelines enhancement would then be added for a greater term of imprisonment.

11 Thus, under *LaBonte*, while Amendment 506 may otherwise be valid, when the  
 12 Guidelines and Amendment 506 are in conflict with the plain language of §994(h), the statutory  
 13 law prevails and the Guidelines and Amendment 506 must give way. The case was reversed. See  
 14 also Cf. *Stinson v. United States*, 508 U.S. 36, 38, 113 S. Ct. 1913 (1993) (explaining that the  
 15 Guidelines commentary "is authoritative unless it violates the Constitution or a federal statute").

16 In sum, absent the qualifying career offender offenses now negated by *Lopez*, this district  
 17 court is prohibited from considering career offender status, and as provided by *LaBonte*, the  
 18 district court may only consider a sentence "at . . . or near the [] term authorized" by Congress,  
 19 once all relevant statutory factors are taken into account. In LIQUORI, SR.'s case, absent career  
 20 offender status or death resulting from the activities as charged, the penalties provided for Counts  
 21 1, 2 and 3, 21 U.S.C. §841, begin at ten (10) years, not life imprisonment.

22  
 23  
 24  
 25 <sup>24</sup> Giving the words used their "ordinary meaning," *Moskal v. United States*, 498 U.S. 103, 108, 111 S. Ct. 461  
 26 (1990), the Court found that the word "maximum" most naturally connotes the "greatest quantity or value  
 27 attainable in a given case." Webster's New International Dictionary (2d ed. 1958); Black's Law Dictionary 979  
 28 (6<sup>th</sup> ed. 1990) ("The highest or greatest amount, quality, value, or degree"). The Court then concluded that the  
 phrase "term authorized" refers not to the period of incarceration specified by the Guidelines, but to that  
 permitted by Congress and the applicable sentencing statutes. Accordingly, the phrase "maximum term  
 authorized" should be construed as requiring the "highest" or "greatest" sentence allowed by statute.

1 **IV. Hicks Further Limits Factors Which the Court May Consider on Resentencing**

2 For Counts 1, 2 and 3, U.S.S.G. §2D1.1(a)(3) & (c)(2) (1991-1996 ed.) provide for a Base  
3 Offense Level of 36-38.<sup>25</sup> It is anticipated that the government will argue on re-sentencing that  
4 some increase in the Base Offense Level should be considered to justify a sentence at or near the  
5 term of life imprisonment previously vacated. Addressing first the factors for increasing Base  
6 Offense Level, the government will seek to introduce the gun charges (resulting from the illicit  
7 search) which accompanied the primary drug violations of which LIQUORI, SR. was found  
8 guilty. LIQUORI, SR. submits the government's anticipated position is undermined by *United*  
9 *States v. Hicks*, 472 F.3d 1167 (9<sup>th</sup> Cir. 2006).

10 Aaron Hicks was convicted and sentenced in 1993 for violation of 21 U.S.C. §841, §846,  
11 and various other statutes. Hicks was also convicted of using and carrying a firearm during and  
12 in relation to a drug trafficking crime, in violation of 18 U.S.C. §922(g) and §924(c). The  
13 Presentence Report ("PSR") increased the Base Offense Level for his possession of a firearm in  
14 the course of drug trafficking. Combining the adjusted offense level with Hicks's Category I  
15 criminal history score yielded a Guideline range of 360 months to life. The PSR also  
16 recommended a consecutive 60-month sentence for the firearm violation. The district court  
17 adopted the PSR's recommendations and sentenced Hicks, who was 22 at the time, to 420 months  
18 in prison.

19 Effective November 1, 2000, the Sentencing Commission adopted Amendment 599, an  
20 explicitly retroactive amendment that modified the Guidelines applicable to gun offenses charged  
21 with the underlying controlled substance violations. This adoption was made pursuant to 28  
22 U.S.C. §994(o), and as required by 18 U.S.C. §3582(c)(2). U.S.S.G. §2K2.4, cmt. n.2 (2000)  
23 states:

24 If a sentence under this guideline is imposed in conjunction with a sentence for an underlying  
25 offense, do not apply any specific offense characteristic for possession, brandishing, use, or  
26 discharge of an explosive or firearm when determining the sentence for the underlying offense. A  
27 sentence under this guideline accounts for any explosive or weapon enhancement for the  
28 underlying offense of conviction, including any such enhancement that would apply based on  
conduct for which the defendant is accountable under §1B1.3 . . . .

<sup>25</sup> Base Offense Level did not increase to 38 until the 1997 U.S.S.G. 1997 edition.



1 Amendment 599 eliminated the enhancement for firearm possession applicable to the  
 2 Base Offense Level and Criminal History Category because the firearm originally used to  
 3 enhance the sentence had also been a part of the underlying offense that constituted both the  
 4 violation of the Controlled Substances Act and the §924(c) conviction. Likewise, on re-  
 5 sentencing, LIQUORI, SR. cannot be subject to an enhanced Base Offense Level or an increased  
 6 Criminal History Category for the firearms found during the illicit search.<sup>26</sup>

7 Next, we address the fact that *Lopez* negated the alleged prior criminal history pertaining  
 8 to drug violations, leaving only the prior state convictions for dissuading a witness - state offense  
 9 alleged to have been committed more than ten (10) years prior to the time of sentencing on the  
 10 instant offense, and for which no federal equivalent existed in 1981.<sup>27</sup> LIQUORI, SR. notes that  
 11 the state conviction for dissuading a witness played no discernable part in the 1991 district court  
 12 proceedings, and absent the requisite "Career Offender Notice", *LaBonte*, supra, can play no  
 13 discernable part today. Under the holding of *United States v. Liquori*, 5 F.3d at 437, the lack of  
 14 career offender status, coupled with the state appellate consolidation of the state convictions for  
 15

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16 <sup>26</sup> Notwithstanding the fact that LIQUORI, SR.'s gun offenses cannot be used to "up the ante" on the Base Offense  
 17 Level on re-sentencing, it is more unfortunate that he has already discharged the sentence on those counts. The  
 18 Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, codified as Chapter 44 of Title 18, United States  
 19 Code ("GCA") is the federal law in the United States that broadly regulates the firearms industry and firearms  
 20 owners. The GCA was enacted after several years of contentious debate, and the assassinations of Martin Luther  
 21 King and Robert Kennedy. It primarily focused on regulating *interstate commerce* in firearms by generally  
 22 prohibiting interstate firearms transfers except among licensed manufacturers, dealers and importers. The law  
 23 was later augmented, modified, and clarified in the Firearms Owners' Protection Act of 1986. The problem posed  
 24 by a conviction under 18 U.S.C. §924(g) in connection with this instant matter is that the situation in which the  
 25 firearms arms were found, in a motor home, during a illicit search, and not in the presence of LIQUORI, SR.  
 26 (nor under his direct care, custody, dominion or control), does not support the requisite and necessary element  
 27 of obtaining the firearms through or otherwise introducing the firearms into "interstate commerce". Thus the  
 28 §924(g) counts were not sufficiently pled in the Superseding Indictment, nor were any facts present at trial to  
 support a conviction beyond a reasonable doubt. See elements of the offense under Fnt. 6 this Brief (the mere  
 fact that a firearm "traveled" is but one-half of the equation - it has to be proven beyond a reasonable doubt that  
 the defendant was the sole and proximate cause of its introduction into "interstate commerce" without  
 intervening or supervening causes or explanations). Again, it is unfortunate that LIQUORI, SR. did not have  
 counsel up to the task of arguing this issue, and has discharged that sentence, otherwise there would certainly  
 be a cognizable argument pertaining to subject matter jurisdiction. Absent sufficient facts to support the  
 allegations, federal jurisdiction is extremely limited, with the same being exercised only in areas external to state  
 legislative power and territory, or in the alternative, a cessation of "territorial jurisdiction over a crime in order  
 to sustain a conviction therefor." *United States v. Benson*, 495 F.2d 475, 481 (5<sup>th</sup> Cir. 1974). Of all the circuits,  
 the Ninth Circuit has addressed jurisdictional issues more often than any of the rest, with decisions dating back  
 to 1888 finding that for the existence of federal jurisdiction, must likewise prove U.S. ownership of the property  
 where the crime was committed and state cession of jurisdiction.

<sup>27</sup> See again Fnt. 8.

1 drug violations with the state convictions for dissuading a witness,<sup>28</sup> the district court is limited  
 2 on resentencing to U.S.S.G. §4A1.1(a) & (b) where certain prior sentences are not counted or are  
 3 counted only under certain conditions. For example, the prior conviction could be assessed a  
 4 maximum of three (3) points, or more likely, because the state crime of dissuading a witness had  
 5 no enumerated counterpart under federal law at the time the state conviction was entered in  
 6 1981, §4A1.1(b) would apply because the state sentence was “imposed more than ten years prior  
 7 to the defendant’s commencement of the instant offense [and] is not counted. See §4A1.2(e).”

8 To minimize problems with imperfect measures of past crime seriousness, criminal  
 9 history categories are based on the maximum term imposed in previous sentences rather than on  
 10 other measures, such as whether the conviction was designated a felony or misdemeanor. In  
 11 recognition of the imperfection of this measure however, §4A1.3(b)(1) authorizes the district  
 12 court to depart from the otherwise applicable criminal history category in certain circumstances  
 13 where the “information indicates that the defendant’s criminal history category substantially over-  
 14 represents the seriousness of the defendant’s criminal history or the likelihood that the defendant  
 15 will commit other crimes[.]” Almost ten (10) years had passed between the entry of state  
 16 convictions (on offenses alleged to have been committed more than ten years prior) and the  
 17 federal conviction which is the subject of this proceeding. During which time, LIQUORI, SR. had  
 18 not been convicted of any other offense that could be used to enhance sentencing or to give the  
 19 presumption of career offender status. Thus, the district court is limited and required to  
 20 acknowledge the appropriateness of downward departure from Criminal History Category II to  
 21 Category I.

22 **V. Booker is Applicable to Resentencing under §3582(c)(2)**

23 At this point in the argument, the district court is considering a Base Offense Level of 36-  
 24 38, and a maximum Criminal History Category of I - II, with a sentencing range, by  
 25 Congressional enactment, beginning at ten (10) years, and a limit on resentencing to not less than  
 26 time of imprisonment already served (currently at 197 months) under §3852(c). The Guidelines

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 28 <sup>28</sup> U.S.S.G. §4A1.2(a)(2) (related cases) (Advisory Cmt. 3: “[P]rior sentences are considered related if they resulted from offenses that . . . (c) were consolidated for trial or sentencing [including final sentence rendered on the basis of remittitur from state appeal consolidating the cases], *Liquori*, supra.

1 Sentencing Table provides a range of 188-235 months, depending on interpretation.

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CHAPTER FIVE - PART A - SENTENCING TABLE						
Criminal History						
Offense Level	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
31						188-235
32					188-235	210-262
33				188-235	210-262	235-293
34			188-235	210-262	235-293	
35		188-235	210-262	235-293		
36	188-235	210-262	235-293			
37	210-262	235-293				
38	235-293					

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In *United States v. Hicks*, 472 F.3d 1167 (9<sup>th</sup> Cir. 2006), the Ninth Circuit considered whether *United States v. Booker's* requirement that the district courts treat the United States Sentencing Guidelines as advisory applies to the resentencing of defendants pursuant to 18 U.S.C. §3582(c). *United States v. Booker*, 543 U.S. 220, 245-46, 125 S. Ct. 738 (2005). Under *Hicks*, the Ninth Circuit held that it does, and because the district court considered the Guidelines mandatory when sentencing LIQUORI, SR., on resentencing, the Guidelines are merely advisory.

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On appeal from the district court's rejection of the Hick's original *Booker* argument, the Circuit Court was presented with two (2) related questions of first impression. First, it required the appellate court to decide whether §3582(c)(2) proceedings fall within the scope of *Booker*. Second, if they fall within *Booker's* ambit, it raises the question of whether policy statements by the Sentencing Commission nonetheless preclude the application of *Booker* to §3582(c)(2). Because *Booker* abolished the mandatory application of the Sentencing Guidelines in all contexts, and because reliance on its holding is not inconsistent with any applicable policy statement, on appeal, the district court was reversed with the holding that *Booker* applies to §3582(c)(2) proceedings and all proceedings in connection with resentencing.

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Under §3582(c)(2), the district court can re-calculate a defendant's sentencing range using the newly declared United States Supreme Court decision of *Lopez* (which effectively serves to reduce the applicable Guideline), along with any other factor the district court deems appropriate, and then determine an appropriate sentence in accordance with the §3553(a) factors. *Id.* Under *Hicks*, the Ninth Circuit stated that the clear language of *Booker* makes the range advisory.



1        *Booker* explicitly stated that, "as by now should be clear, [a] mandatory system is no  
2 longer an open choice." *Booker*, 543 U.S. at 263. Although the Court acknowledged that  
3 Congress had intended to create a mandatory Guidelines system, *Booker* stressed that this was  
4 not an option: "[W]e repeat, given today's constitutional holding, [a mandatory Guideline  
5 regime] is not a choice that remains open. . . . [W]e have concluded that today's holding is  
6 fundamentally inconsistent with the judge-based sentencing system that Congress enacted into  
7 law." *Id.* at 265. The Court never qualified this statement, and never suggested, explicitly or  
8 implicitly, that the mandatory Guideline regime survived in any context.

9        In fact, the Court emphasized that the Guidelines could not be construed as mandatory in  
10 one context and advisory in another. When the government suggested, in *Booker*, that the  
11 Guidelines be considered advisory in certain, constitutionally-compelled cases, but mandatory  
12 in others, the Court quickly dismissed this notion, stating, "we do not see how it is possible to  
13 leave the Guidelines as binding in other cases. . . . [W]e believe that Congress would not have  
14 authorized a mandatory system in some cases and a non-mandatory system in others, given the  
15 administrative complexities that such a system would create." *Id.* at 266. In short, *Booker*  
16 expressly rejected the idea that the Guidelines might be advisory in certain contexts but not in  
17 others, and Congress has done nothing to undermine this conclusion. Because a "mandatory  
18 system is no longer an open choice," *Id.* at 263, district courts are necessarily endowed with the  
19 discretion to depart from the Guidelines when issuing new sentences under §3582(c)(2).

20        The government is expected to offer two (2) arguments in opposition, but neither will be  
21 even remotely persuasive. First, the government will assert that only the Sentencing Commission  
22 can grant authority for re-sentencing under §3582(c)(2). The government will declare that  
23 §3582(c)(2) allows for re-sentencing only when "a sentencing range . . . has subsequently been  
24 lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o)." 18 U.S.C. §3582(c)(2),  
25 citing *United States v. Price*, 438 F.3d 1005, 1007 (10<sup>th</sup> Cir. 2006), for the proposition that  
26 "*Booker* does not provide a basis for a sentence reduction under § 3582(c)(2)." The government's  
27 position will completely misapprehend and misstate the argument being presented by LIQUORI,  
28 SR. as it did in *Hicks*. LIQUORI, SR. is not arguing that he deserves a §3582(c)(2) re-sentencing  
because of *Booker*. His entitlement is based on *Lopez*.

1        *Price* addresses a wholly distinct issue: whether *Booker* itself provides the requisite  
2 authority to reopen sentencing proceedings under §3582(c). As discussed above, *Booker* did not  
3 lower any sentencing ranges; it simply rendered the Guidelines advisory. Here, LIQUORI, SR.  
4 is already eligible for re-sentencing because the United States Supreme Court, by precedent of  
5 *Lopez*, has caused the Guideline to be lowered. Therefore, the government's anticipated reliance  
6 on *Price* and the quoted statutory language will be misplaced.

7        Next, the government will argue that *Booker* is inapplicable because a §3582(c)(2)  
8 proceeding is not a "full re-sentencing," but merely a modification of the defendant's sentence.  
9 See 18 U.S.C. §3582(c) ("The court may not modify a term of imprisonment once it has been  
10 imposed . . .") (emphasis added). *United States v. Stockdale*, 129 F.3d 1066 (9<sup>th</sup> Cir. 1997) (i.e.,  
11 the court considered whether the safety valve statute, 18 U.S.C. §3553(f) applied to §3582(c)(2)  
12 proceedings).<sup>29</sup> LIQUORI, SR. counters by citing *Hicks* and *United States v. Ono*, 72 F.3d 101,  
13 102 (9<sup>th</sup> Cir. 1995), which stated, "the purpose of a §3582 motion is resentencing."

14        While §3582(c)(2) proceedings do not constitute full re-sentencings, their purpose is to  
15 give defendants a new sentence. This resentencing, while limited in certain respects, still results  
16 in the judge calculating a new Guideline range, considering the §3553(a) factors, and issuing a  
17 new sentence based on the Guidelines. The dichotomy drawn by the government, where full re-  
18 sentencings are performed under an advisory system while "reduction proceedings," or  
19 "modifications," rely on a mandatory Guideline system, is false. As discussed above, *Booker*  
20 excised the statutes that made the Guidelines mandatory and rejected the argument that the  
21 Guidelines might remain mandatory in some cases but not in others. *Booker*, 543 U.S. at 263-66.  
22 Mandatory Guidelines no longer exist, in this context or any other.

23        The district court should consider as material and relevant: (1) LIQUORI, Sr. was  
24 adjudicated career offender status and sentenced to life imprisonment under a materially untrue  
25 foundation of non-qualifying state convictions entered almost ten (10) years prior to the instant  
26 conviction; (2) during the period of time between the 1981 state convictions and the 1991 federal  
27 conviction, LIQUORI, SR. had been convicted of no other offenses which would qualify for

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<sup>29</sup> The court also noted that the "inferences from grammar" undergirding its decision "might be a bit thin." *Stockdale*, 129 F.3d at 1069.

1 adjudication under career offender status; (3) Congressional intent by statutory enactment began  
 2 the applicable term of imprisonment at ten (10) years for Counts 1, 2 & 3 and not a mandatory  
 3 sentence of life imprisonment; and (4) LIQUORI, SR. has already served more time of  
 4 imprisonment than provided by both the lower range of the Congressional intent and the  
 5 Guidelines (197 months served vs. 188 months Guidelines v. 120 months statute).

6 Taking into consideration the advisory nature of the Guidelines and the above facts, the  
 7 district court should enter a sentence for the time of imprisonment served, which would include  
 8 the time of supervised release.

9 **VI. Pre-Booker Mandatory Guidelines and Statutes that Restrict the Inherent**  
 10 **Jurisdiction of a District Court to Correct an Illegal Sentence Rendered on a**  
 11 **Materially Untrue Foundation are Unconstitutional and Require Liquori, Sr.'s**  
 12 **Sentence of Life Imprisonment to be Set Aside as a Fundamental Miscarriage**  
 13 **of Justice**

14 Last, we come to the most important issue of all - the unconstitutionality of a sentence  
 15 rendered upon a materially untrue foundation which has resulted in a denial of due process and  
 16 created a fundamental miscarriage of justice. To establish a fundamental miscarriage of justice,  
 17 LIQUORI, SR. must establish that error has substantially undermined the accuracy of the  
 18 proceedings, *Smith v. Murray*, 477 U.S. 527, 106 S.Ct. 2661 (1986). This requires a showing  
 19 that more probable than not, upon examination of all of the available facts, information, and  
 20 evidence, the result will be different, *Id.*, 477 U.S. at 527-539. If the district court has "doubt"  
 21 whether or not the error was harmless or whether the error infected the proceedings, the error  
 22 must be construed in favor of the substantial rights of LIQUORI, SR., treated as prejudicial, and  
 23 relief granted. *O'Neal v. McAnich*, 513 U.S. 432, 115 S. Ct. 992 (1994).

24 Such are the circumstances of this case. LIQUORI, SR. was sentenced to life  
 25 imprisonment on the basis of a materially untrue foundation - two (2) prior state drug convictions  
 26 that were insufficient under the Controlled Substances Act to support career offender status. More  
 27 than any other question presented by the modern corpus juris, the decision process involving a  
 28 person accused of criminal misconduct is inherently complex and judgmental. It depends largely,  
 if not entirely, on the humanitarian instincts of the judiciary, the mosaic of beliefs and  
 backgrounds of the individual participants, the degree of faith society places on the dignity of the  
 human personality and the value society places on the correctness and accuracy of the factual

1 determination. *Refer Harold Hitz Burton Papers*, Library of Congress, quoted, D. Danelski, "The  
2 Riddle of Justice Murphy's Personality and Jurisprudence," 13 Law & Social Inquiry 196 (1988).

3 When forced to examine a sentence of life imprisonment rendered on a materially untrue  
4 foundation, the oppressive quarantine of LIQUORI, SR. from society simply cannot be supported.  
5 Life imprisonment, the penalty assessed, is distinct from all other forms of punishment, not only  
6 in degree, but in kind. As a "remedy," it is unique. It is unique as a form of living death penalty  
7 where the sanctity of name and faith is traded for a number on the back; unique in its  
8 irrevocability and its life long stigma; unique in the total rejection of rehabilitation as the basic  
9 purpose of criminal justice; and unique in total renunciation of all that is embodied in the concept  
10 of humanity. To adjudicate forever LIQUORI, SR. as irredeemable based on a materially untrue  
11 foundation cannot be said to contribute measurably to the moral and social purposes codified by  
12 the United States Constitution.

13 Had it been the expressed desire of some "Grade B" movie mad scientist to resurrect a  
14 constitutional fossil to stalk and devour the precepts of fundamental fairness and to undermine  
15 the Due Process Clause and LIQUORI, SR.'s right to a fair proceeding, a better example could  
16 not have been found than the record of this case - for lack of a better expression, it is a judicial  
17 "believe-it-or-not" which has resulted in a suspect sentence with the irrefutable consequence of  
18 sorely diminished levels of trust which are so inextricably required for an effective adversarial  
19 system. In this case, there is a gut-wrenching, but well grounded feeling that justice has not been  
20 done. *In re Forfeiture Hearing as to Caplin and Drysdale*, 491 U.S. 617, 109 S.Ct. 2667 (1989)  
21 (commentary by Justice Thurgood Marshal during oral argument when examined independently  
22 on certiorari).

23 Before the Guidelines, a district court was empowered to correct an illegal sentence at any  
24 time. Arguing the need to return to "pre-Booker" discretion, courts which make a mistake in  
25 rendering a judgment which works to the extreme detriment of a defendant maintain  
26 constitutionally inherent authority to correct that judgment. This inherent authority to correct a  
27 judgment or sentence founded upon a mistake and untrue foundation is in accord with the  
28 constitutional considerations of due process underlying the sentencing procedure itself.

The United States Supreme Court has expressly held that: "where a defendant is sentenced

1 on the basis of materially untrue assumptions concerning his criminal record, the results, whether  
 2 caused by carelessness or design, is inconsistent with due process of law." *Townsend v. Burke*,  
 3 334 U.S. 736, 741, 68 S.Ct. 1252, 1255 (1948). Further, the cases clearly establish that  
 4 constitutionally violative "materially untrue assumptions" concerning a criminal record may arise  
 5 either as a result of a sentencing judge's correct perception of inaccurate or false information, or  
 6 a sentencing judge's incorrect perception or misapprehension of otherwise accurate or true  
 7 information. See *United States v. Myers*, 374 F.2d 707, 710-712 (3<sup>rd</sup> Cir. 1967); *United States v.*  
 8 *Malcolm*, 432 F.2d 809, 816 (2<sup>nd</sup> Cir. 1970) (sentencing judge misread criminal record and  
 9 sentenced defendant while under the materially untrue foundation that he had suffered three prior  
 10 convictions for strong arm robbery); *United States v. Weston*, 448 F.2d 626 (9<sup>th</sup> Cir. 1971)  
 11 (sentencing judge's reliance upon pre-sentence investigation report predicated on inaccurate  
 12 factual basis amounts to due process violation).

13 In 1987, this authority became caught in a state of confusion - for offenses committed  
 14 after the effective date of the Guidelines, district courts were restricted in their authority to  
 15 correct illegal sentences, and only until the expiration of the time for appeal. *United States v.*  
 16 *Hovsepian*, 307 F.3d 922, 927 (9<sup>th</sup> Cir. 2002); *United States v. Caterino*, 29 F.3d 1390 (9<sup>th</sup> Cir.  
 17 1994); *United States v. Stump*, 914 F.2d 170, 172 (9<sup>th</sup> Cir. 1990).

18 With the advent of *Booker*, and the decision that the Guidelines are advisory and no  
 19 longer mandatory, pre-*Booker* mandatory guidelines and statutes that restrict the inherent  
 20 jurisdiction of a district court to correct an illegal sentence rendered on a materially untrue  
 21 foundation are unconstitutional. Likewise, the district court's misapprehension of LIQUORI,  
 22 SR.'s criminal record when the original judgment of conviction was entered in 1991 has resulted  
 23 in a violation of the right to due process of law, and a sentence that is equally unconstitutional  
 24 and which must be vacated.<sup>30</sup>

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27 <sup>30</sup> The Government will be expected, as a last effort, to argue that, despite the obvious due process violation, the  
 28 resentencing of LIQUORI, SR. in this matter will open "Pandora's Box" and lead to an avalanche of  
 resentencing motions by his co-defendants. However, LIQUORI, SR. was the only defendant in this matter  
 wrongfully adjudicated and sentenced to life imprisonment as a career offender based upon the materially untrue  
 foundation of the two (2) prior state convictions for controlled substance violations.

**Conclusion**

1  
2       **WHEREFORE**, LIQUORI, SR.'s sentence of life imprisonment on Counts 1, 2 and 3  
3 must be set aside and vacated as a fundamental miscarriage of justice, or in the alternative,  
4 LIQUORI, SR.'s sentence must be set aside and a corrected sentence entered nunc pro tunc  
5 equivalent to not more than time of pre-trial confinement and imprisonment served since  
6 December 6, 1990, and LIQUORI, SR., released from custody.

7       DATED this 13<sup>th</sup> Day of November, 2007.

8                               **FOR THE DEFENDANT**

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10                               

11                               **RONALD PETER LIQUORI, SR.**  
12                               U.S.B.O.P. No. 26246-198  
13                               USP LOMPOC  
14                               UNITED STATES PENITENTIARY  
15                               3901 KLEIN BLVD.  
16                               LOMPOC, CA 93436  
17                               *Defendant Pro Per*  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this date, I served a true and correct copy of the foregoing document by United States Mail on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below.

***United States Attorney***  
Southern District of California  
Criminal Division  
880 Front Street, Room 6293  
San Diego, CA 92101

DATED this <sup>20</sup>~~13~~<sup>th</sup> Day of November, 2007.

**FOR THE DEFENDANT**

  
**RONALD PETER LIQUORI, SR.**  
U.S.B.O.P. No. 26246-198  
USP LOMPOC  
UNITED STATES PENITENTIARY  
3901 KLEIN BLVD.  
LOMPOC, CA 93436  
***Defendant Pro Per***

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**EXHIBIT No. 1  
SUPERSEDING INDICTMENT**



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**EXHIBIT No. 2**  
**NOTICE WITH ATTACHED ABSTRACT OF JUDGMENT**

FILED	LODGED
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FEB 21 1991	
CLERK U S DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY _____ DEPUTY	

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

May 1990 Grand Jury

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>RONALD PETER LIQUORI, SR. (1), aka Dirt, CARLA JO DODSON (2), DAVID RAOUL AYALA (3), aka DA, RONALD PETER LIQUORI, JR. (4), aka Ronnie, aka Dust, KAREN GENE ARCHER (5), aka Little Bit, JESSE PORTILLO (6), MICHAEL MARK CERVANTES (7), MARCEL ANTON BECKER (8), aka Flash, LINDA MCMURRAY (9),</p> <p style="text-align: center;">Defendants.</p>	<p>Criminal Case No. 90-1181-K</p> <p><b>I N D I C T M E N T</b> (Superseding)</p> <p>Title 21, U.S.C., Secs. 846 and 841(a)(1) - Conspiracy to Manufacture and Possess Methamphetamine with Intent to Distribute; Title 21, U.S.C., Secs. 846 and 841(a)(1) - Manufacture and Attempted Manufacture of Methamphetamine; Title 21, U.S.C., Secs. 841(d)(1), 802(33) and 802(34)(C) - Possession of a Listed Chemical with Intent to Manufacture Methamphetamine; Title 21, U.S.C., Sec. 841(a)(1) - Possession of Methamphetamine with Intent to Distribute; Title 18, U.S.C., Sec. 922(g)(1) - Felon in Possession of a Firearm; Title 18, U.S.C., Sec. 922(g)(3) - Unlawful User of a Controlled Substance in Possession of a Firearm; Title 26, U.S.C., Sec. 5861(d) - Possession of an Unregistered Firearm; Title 26, U.S.C., Sec. 5861(i) - Possession of Firearm without Serial Number; Title 18, U.S.C., Sec. 2 - Aiding and Abetting</p>
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LJB:lb:San Diego  
02/21/91

1 The grand jury charges:

2 Count 1

3 Beginning at a date unknown to the grand jury and continuing  
4 up to and including November 30, 1990, within the Southern District  
5 of California, and elsewhere, defendants RONALD PETER LIQUORI, SR.,  
6 aka Dirt, CARLA JO DODSON, DAVID RAOUL AYALA, aka DA, RONALD PETER  
7 LIQUORI, JR., aka Ronnie, aka Dust, KAREN GENE ARCHER, aka Little  
8 Bit, JESSE PORTILLO, MICHAEL MARK CERVANTES, and MARCEL ANTON  
9 BECKER, aka Flash, did knowingly and intentionally conspire  
10 together and with each other and with divers other persons known  
11 and unknown to the grand jury to manufacture and possess, with  
12 intent to distribute, 100 grams and more of methamphetamine, a  
13 Schedule II Controlled Substance, in violation of Title 21, United  
14 States Code, Section 841(a)(1).

15 OVERT ACTS

16 In furtherance of said conspiracy and to effect the objects  
17 thereof, the following overt acts, among others, were committed  
18 within the Southern District of California, and elsewhere:

- 19 1. In the Spring of 1988, defendants DAVID RAOUL AYALA, aka  
20 DA, and MICHAEL MARK CERVANTES travelled from San Diego,  
21 California, to Las Vegas, Nevada, to pick up  
22 approximately eight pounds of methamphetamine from  
23 another person.
- 24 2. In or about June, 1988, defendants CARLA JO DODSON and  
25 DAVID RAOUL AYALA, aka DA, travelled from San Diego,  
26 California, to Indio, California, and took delivery of  
27 approximately eight pounds of methamphetamine from  
28 another person.

- 1           3. In or about August, 1988, in San Diego County,  
2           California, defendant CARLA JO DODSON advised another  
3           person that defendant RONALD PETER LIQUORI, SR., aka  
4           Dirt, would provide protection for that person's  
5           methamphetamine manufacturing business in exchange for  
6           a payment of \$5,000 and a percentage of the  
7           methamphetamine business.
- 8           4. From in or about October, 1988, to in or about February,  
9           1989, defendants CARLA JO DODSON, DAVID RAOUL AYALA, aka  
10          DA, and JESSE PORTILLO assisted another person with the  
11          manufacture of methamphetamine by providing precursor  
12          chemicals and distributing the manufactured  
13          methamphetamine to other persons, including, but not  
14          limited to, defendant RONALD PETER LIQUORI, SR., aka  
15          Dirt.
- 16          5. From in or about May, 1988, to in or about September,  
17          1989, defendants CARLA JO DODSON and DAVID RAOUL AYALA,  
18          aka DA, assisted in the operation of a clandestine  
19          methamphetamine laboratory at 20479 Dearhorn Valley Road,  
20          Jamul, California, and defendants CARLA JO DODSON, DAVID  
21          RAOUL AYALA, aka DA, and JESSE PORTILLO received  
22          methamphetamine produced at that laboratory for  
23          distribution.
- 24          6. In the summer of 1989, defendant RONALD PETER LIQUORI,  
25          JR., aka Ronnie, aka Dust, delivered precursor chemicals  
26          and glassware to be used in the operation of a  
27          clandestine methamphetamine laboratory to 20479 Dearhorn  
28          Valley Road, Jamul, California.

- 1           7.    In the summer of 1989, defendant RONALD PETER LIQUORI,  
2               JR., aka Ronnie, aka Dust, threatened the life of another  
3               person and held that person at gunpoint in order to  
4               acquire information regarding the manufacture of  
5               methamphetamine at 20479 Dearhorn Valley Road, Jamul,  
6               California.
- 7           8.    From in or about September, 1989, through in or about  
8               April, 1990, defendants CARLA JO DODSON, DAVID RAOUL  
9               AYALA, aka DA, and RONALD PETER LIQUORI, JR., aka Ronnie,  
10              aka Dust, and another person operated a clandestine  
11              methamphetamine laboratory at 552 Felicita Avenue, Spring  
12              Valley, California.
- 13          9.    In or about March, 1990, at 552 Felicita Avenue, Spring  
14               Valley, California, defendant RONALD PETER LIQUORI, SR.,  
15               aka Dirt, delivered to another person approximately five  
16               gallons of hydriodic acid to be used in the manufacture  
17               of methamphetamine.
- 18          10.   On or about May 11, 1990, at 3333 Helix Street, Spring  
19               Valley, California, defendants RONALD PETER LIQUORI, SR.,  
20               aka Dirt, CARLA JO DODSON, and DAVID RAOUL AYALA, aka DA,  
21               possessed in a storage shed approximately 426.6 grams of  
22               methamphetamine hydroiodide in liquid form, as well as  
23               rags and a paper sack soaked with methamphetamine for  
24               manufacture into methamphetamine hydrochloride for  
25               distribution.
- 26          11.   On or about May 11, 1990, at 3333 Helix Street, Spring  
27               Valley, California, defendant RONALD PETER LIQUORI, SR.  
28               possessed in a motorhome firearms, to wit, a loaded Smith

1 & Wesson revolver, serial number B127358 and a loaded  
2 Beretta pistol, serial number BER62524V.

3 12. On or about May 11, 1990, at 3333 Helix Street, Spring  
4 Valley, California, defendant RONALD PETER LIQUORI, SR.  
5 possessed in a campershell firearms, to wit, a loaded  
6 Titan revolver, serial number 800587, a loaded Ruger  
7 pistol, serial number 1726349, a Smith & Wesson revolver,  
8 serial number 228836, and ammunition.

9 13. On or about May 11, 1990, at 3333 Helix Street, Spring  
10 Valley, California, defendants CARLA JO DODSON and DAVID  
11 RAOUL AYALA, aka DA, possessed a firearm, to wit, a  
12 loaded Mossberg, model 500A, 12 gauge pump shotgun,  
13 serial number J888436, and ammunition.

14 14. On or about May 11, 1990, at Locker #198, Public Storage  
15 Rentals, 8614 Jamacha Road, Spring Valley, California,  
16 defendants CARLA JO DODSON and DAVID RAOUL AYALA, aka DA,  
17 possessed approximately 448.4 grams of methamphetamine  
18 hydroiodide for manufacture into methamphetamine  
19 hydrochloride for distribution.

20 15. On or about May 11, 1990, at Locker #198, Public Storage  
21 Rentals, 8614 Jamacha Road, Spring Valley, California,  
22 defendants CARLA JO DODSON and DAVID RAOUL AYALA, aka DA,  
23 possessed firearms, to wit, a High Standard, .22 caliber  
24 pistol, serial number 399191, and a North American Arms,  
25 .22 caliber derringer, serial number C11117, and  
26 ammunition.

27 16. On or about May 11, 1990, at Locker #211, Public Storage  
28 Rentals, 8614 Jamacha Road, Spring Valley, California,

1 defendant DAVID RAOUL AYALA, aka DA, possessed a 3-foot  
2 condenser which was to be used in the manufacture of  
3 methamphetamine and possessed methamphetamine residue.

4 17. On or before May 11, 1990, at 8424 Stansbury Street,  
5 Spring Valley, California, defendants RONALD PETER  
6 LIQUORI, SR., aka Dirt, RONALD PETER LIQUORI, JR., aka  
7 Ronnie, aka Dust, and KAREN GENE ARCHER, aka Little Bit,  
8 possessed approximately 15.6 kilograms of ephedrine HCL,  
9 filter papers, and two scales.

10 18. In or about May, 1990, at 8424 Stansbury Street, Spring  
11 Valley, California, defendants RONALD PETER LIQUORI, JR.,  
12 aka Ronnie, aka Dust, and KAREN GENE ARCHER, aka Little  
13 Bit, possessed firearms, to wit, a loaded Ruger .22  
14 pistol, serial number 17-44205, a loaded Browning 380  
15 pistol, serial number 04212, a Walther PPK/S 380 pistol,  
16 serial number 037422, a loaded Remington 12 gauge  
17 shotgun, model 870, serial number 86443V, a Norinco AKS  
18 5.56 rifle with laser light, serial number 345-309612,  
19 a .22 caliber knife firearm without a serial number, and  
20 ammunition.

21 19. On or about May 12, 1990, at 552 Felicita Avenue, Spring  
22 Valley, California, defendant MARCEL ANTON BECKER, aka  
23 Flash, stood guard and defendant RONALD PETER  
24 LIQUORI, SR., aka Dirt, beat another person with a 6-  
25 cell flashlight, thereby causing injury to that person's  
26 eye, face and shoulder after demanding methamphetamine  
27 from that person.

28

6 21. On or about November 30, 1990, at 4341 51st Street, San  
7 Diego, California, defendants RONALD PETER LIQUORI, JR.,  
8 aka Ronnie, aka Dust, and KAREN GENE ARCHER, aka Little  
9 Bit, possessed approximately 13.8 grams of  
10 methamphetamine.

11 All in violation of Title 21, United States Code, Section 846.

12 Count 2

On or about May 11, 1990, within the Southern District of California, defendants RONALD PETER LIQUORI, SR., aka Dirt, CARLA JO DODSON, and DAVID RAOUL AYALA, aka DA, did knowingly and intentionally manufacture, and attempt to manufacture, 100 grams and more of methamphetamine, a Schedule II Controlled Substance; in violation of Title 21, United States Code, Sections 846 and 841(a)(1), and Title 18, United States Code, Section 2.

20 Count 3

On or about May 11, 1990, within the Southern District of California, defendants RONALD PETER LIQUORI, SR., aka Dirt, CARLA JO DODSON and DAVID RAOUL AYALA, aka DA, did knowingly and intentionally manufacture, and attempt to manufacture, 10 grams and more of methamphetamine, a Schedule II Controlled Substance; in violation of Title 21, United States Code, Sections 846 and 841(a)(1), and Title 18, United States Code, Section 2.

28 //



1 Count 4

2 On or about May 11, 1990, within the Southern District of  
3 California, defendants RONALD PETER LIQUORI, SR., aka Dirt, RONALD  
4 PETER LIQUORI, JR., aka Ronnie, aka Dust, and KAREN GENE ARCHER,  
5 aka Little Bit, did knowingly and intentionally possess a listed  
6 chemical, to wit, 15.6 kilograms of ephedrine, a listed precursor  
7 chemical, with intent to manufacture a controlled substance, to  
8 wit, methamphetamine; in violation of Title 21, United States Code,  
9 Sections 841(d)(1), 802(33) and 802(34)(C), and Title 18, United  
10 States Code, Section 2.

11 Count 5

12 On or about May 11, 1990, within the Southern District of  
13 California, defendant LINDA MCMURRAY did knowingly and  
14 intentionally possess, with intent to distribute, approximately  
15 25.1 grams of methamphetamine, a Schedule II Controlled Substance;  
16 in violation of Title 21, United States Code, Section 841(a)(1).

17 Count 6

18 On or about May 11, 1990, within the Southern District of  
19 California, defendant RONALD PETER LIQUORI, SR., aka Dirt, being  
20 a person who had previously been convicted in a court, that is, the  
21 Superior Court of California, County of San Diego, of crimes  
22 punishable by imprisonment for a term exceeding one year, that is,  
23 on or about September 21, 1982, of possession of a controlled  
24 substance, in violation of California Health and Safety Code  
25 Section 11377(a); and on or about September 16, 1982, of dissuading  
26 a witness, in violation of California Penal Code,  
27 Section 136.1(c)(1)(2), did knowingly and unlawfully possess in and  
28 affecting commerce firearms, to wit, a Smith & Wesson revolver,

Case 3:90-cr-01181-H Document 403 Filed 05/14/1997 Page 90 of 318

1 serial number B127358, and a Beretta pistol, serial number  
2 BER62524V; in violation of Title 18, United States Code,  
3 Sections 922(g)(1) and 924(a).

4 Count 7

5 On or about May 11, 1990, within the Southern District of  
6 California, defendant RONALD PETER LIQUORI, SR., aka Dirt, being  
7 a person who had previously been convicted in a court, that is, the  
8 Superior Court of California, County of San Diego, of crimes  
9 punishable by imprisonment for a term exceeding one year, that is,  
10 on or about September 21, 1982, of possession of a controlled  
11 substance, in violation of California Health and Safety Code  
12 Section 11377(a); and on or about September 16, 1982, of dissuading  
13 a witness, in violation of California Penal Code,  
14 Section 136.1(c)(1)(2), did knowingly and unlawfully possess in and  
15 affecting commerce firearms, to wit, a Titan revolver, serial  
16 number 800587, a Ruger pistol, serial number 1726349, and a Smith  
17 & Wesson revolver, serial number 228836; in violation of Title 18,  
18 United States Code, Sections 922(g)(1) and 924(a).

19 Count 8

20 On or about May 11, 1990, within the Southern District of  
21 California, defendant RONALD PETER LIQUORI, SR., aka Dirt, being  
22 an unlawful user of a controlled substance as defined in Title 21,  
23 United States Code, Section 802, did knowingly and unlawfully  
24 possess in and affecting commerce firearms, to wit, a Smith &  
25 Wesson revolver, serial number B127358, and a Beretta pistol,  
26 serial number BER62524V; in violation of Title 18, United States  
27 Code, Sections 922(g)(3) and 924(a).

28 //

Count 9

On or about May 11, 1990, within the Southern District of California, defendant RONALD PETER LIQUORI, SR., aka Dirt, being an unlawful user of a controlled substance as defined in Title 21, United States Code, Section 802, did knowingly and unlawfully possess in and affecting commerce firearms, to wit, a Titan revolver, serial number 800587, a Ruger pistol, serial number 1726349, and a S&W revolver, serial number 228836; in violation of Title 18, United States Code, Sections 922(g)(3) and 924(a).

Count 10

On or about May 11, 1990, within the Southern District of California, defendant DAVID RAOUL AYALA, aka DA, being a person who had previously been convicted in a court, that is, the Superior Court of California, County of San Diego, of a crime punishable by imprisonment for a term exceeding one year, that is, on or about October 2, 1987, of possession of a controlled substance, in violation of California Health & Safety Code Section 11377(a), did knowingly and unlawfully possess in and affecting commerce firearms, to wit, a High Standard, .22 caliber pistol, serial number 399191, a North American Arms, .22 caliber derringer, serial number C11117, and a Mossberg, model 500A, 12 gauge pump shotgun, serial number J888436; in violation of Title 18, United States Code, Sections 922(g)(1) and 924(a).

Count 11

On or about May 11, 1990, within the Southern District of California, defendant DAVID RAOUL AYALA, aka DA, being an unlawful user of a controlled substance as defined in Title 21, United States Code, Section 802, did knowingly and unlawfully possess in

1 and affecting commerce firearms, to wit, a High Standard, .22  
2 caliber pistol, serial number 399191, a North American Arms,  
3 .22 caliber derringer, serial number C11117, and a Mossberg,  
4 model 500A, 12 gauge pump shotgun, serial number J888436; in  
5 violation of Title 18, United States Code, Sections 922(g)(3) and  
6 924(a).

7 Count 12

8 In or about May, 1990, within the Southern District of  
9 California, defendants RONALD PETER LIQUORI, JR., aka Ronnie, aka  
10 Dust, and KAREN GENE ARCHER, aka Little Bit, being unlawful users  
11 of a controlled substance as defined in Title 21, United States  
12 Code, Section 802, did knowingly and unlawfully possess in and  
13 affecting commerce firearms, to wit, a Ruger .22 pistol, serial  
14 number 17-44205, a Browning 380 pistol, serial number 04212, a  
15 Walther PPK/S 380 pistol, serial number 037422, a Remington  
16 12 gauge shotgun, model 870, serial number 86443V, a Norinco AKS  
17 5.56 rifle with laser light, serial number 345-309612, and a  
18 .22 caliber knife firearm without a serial number; in violation of  
19 Title 18, United States Code, Sections 922(g)(3) and 924(a), and  
20 Title 18, United States Code, Section 2.

21 Count 13

22 In or about May, 1990, within the Southern District of  
23 California, defendants RONALD PETER LIQUORI, JR., aka Ronnie, aka  
24 Dust, and KAREN GENE ARCHER, aka Little Bit, did knowingly and  
25 unlawfully possess a firearm, to wit, a .22 caliber knife firearm  
26 initialed "IOP", which had not been registered to them in the  
27 National Firearms Registration and Transfer Record; in violation  
28 of Title 26, United States Code, Sections 5861(d) and 5871.

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Count 14

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In or about May, 1990, within the Southern District of California, defendants RONALD PETER LIQUORI, JR., aka Ronnie, aka Dust, and KAREN GENE ARCHER, aka Little Bit, did knowingly and unlawfully possess a .22 caliber knife firearm initialed "TOP" which did not bear a serial number as required by Title 26, United States Code, Section 5842; in violation of Title 26, United States Code, Sections 5861(i) and 5871.

Count 15

On or about November 30, 1990, within the Southern District of California, defendants RONALD PETER LIQUORI, JR., aka Ronnie, aka Dust, and KAREN GENE ARCHER, aka Little Bit, did knowingly and intentionally possess, with intent to distribute, approximately 13.8 grams of methamphetamine, a Schedule II Controlled Substance; in violation of Title 21, United States Code, Section 841(a)(1), and Title 18, United States Code, Section 2.

DATED: February 21, 1991.

A TRUE BILL:

\_\_\_\_\_  
Foreperson

WILLIAM BRANIFF  
United States Attorney

By: \_\_\_\_\_  
LAURA J. BIRKMEYER  
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

vs.

RONALD PETER LIQUORI SR. (01)

THE DEFENDANT:

/ / pleaded guilty to count(s)

CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
JUDGEMENT INCLUDING SENTENCE  
UNDER THE SENTENCING REFORM ACT  
Criminal Case No. 90-1181-K  
DOUGLAS BROWN  
Defendant's Attorney

/X/ was found guilty on count(s) 1,2,3,4,6,8 of the superseding indictment after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

TITLE & SECTION	NATURE OF OFFENSE	COUNT NUMBER(S)
21 USC 846,841(a)(1)	CONSPIRACY TO MANUFACTURE AND POSSESSION OF METHAMPHETAMINE WITH INTENT TO DISTRIBUTE	S1
21 USC 846,841(a)(1) & 18 USC 2	MANUFACTURE AND ATTEMPTED MANUFACTURE OF METHAMPHETAMINE	S2&S3
21 USC 841(d)(1),802(33) and 802(34)(c),18 USC 2	AIDING AND ABETTING THE POSSESSION OF A LISTED CHEMICAL WITH INTENT TO MANUFACTURE METHAMPHETAMINE	S4
18 USC 922(g)(1),924(a)	FELON IN POSSESSION OF A FIREARM	S6
18 USC 922(g)(3),924(a)	UNLAWFUL USER OF CONTROLLED SUBSTANCE IN POSSESSION OF A FIREARM	S8

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

/ / The defendant has been found not guilty on count(s) \_\_\_\_\_ and is discharged as to such count(s).

/ / \_\_\_\_\_ (is)(are) dismissed on the motion of the United States.

/X/ It is ordered that the defendant shall pay to the United States a special assessment of \$ 300.00 which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within thirty days of any change of residence or mailing address until all fines, restitution, costs and special assessments imposed by this Judgment are fully paid.

Defendant's Soc. Sec. Number:  
155-32-5347

Defendant's address:  
3901 Klein Boulevard  
Lompoc, California 93436

DECEMBER 18, 1991  
DATE OF IMPOSITION OF SENTENCE

JUDITH N. KEEP  
UNITED STATES DISTRICT JUDGE  
FILED: 12/18/91

WILLIAM W. LUDDY, CLERK  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
DATED: 12/18/91

I hereby attest and certify on 12-20-91  
That the foregoing document is a true and correct copy of the original on file in my office and is in my custody.

WILLIAM W. LUDDY  
CLERK U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

By [Signature] Deputy

RECEIVED  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
12/18/91



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	Criminal Case No. 90-1181-K
	)	
Plaintiff,	)	<b>I N F O R M A T I O N</b>
	)	<b>and NOTICE</b>
v.	)	
	)	Title 21, U.S.C.,
RONALD PETER LIQUORI, SR.,	)	Sec. 841(b)(1)(A) and 851 -
aka Dirt,	)	Notice of Enhanced Penalties
	)	as a Result of Prior Felony
Defendant.	)	Convictions Under Title 21 of
	)	the United States Code or
	)	Related State Statutes

TO: DEFENDANT RONALD PETER LIQUORI, SR., AND HIS COUNSEL OF  
RECORD, FRANK MURPHY, ESQ., YOU ARE HEREBY ON NOTICE THAT:


On or about September 16, 1982, in the Superior Court of  
California, County of San Diego, in Case No. CR58321 (the  
Abstract of Judgment and Commitment for which is attached),  
defendant RONALD PETER LIQUORI, SR., aka Dirt, was convicted of  
the felony of Possession of Controlled Substances, in violation  
of California Health and Safety Code, Section 11377(a).  
Additionally, on or about September 21, 1982, in the Superior  
Court of California, County of San Diego, in Case No. CR58779  
(the Abstract of Judgment and Commitment for which is attached),  
defendant RONALD PETER LIQUORI, SR, aka Dirt, was convicted of



1 the felony of Possession of Controlled Substances, in violation  
2 of California Health and Safety Code, Section 11377(a).  
3 Therefore, pursuant to the provisions of Title 21, United States  
4 Code, Section 841(b)(1)(A), the minimum mandatory penalty for  
5 defendant RONALD PETER LIQUORI, SR., upon conviction for the  
6 offense contained in Count 1 or Count 2 of the indictment in  
7 Criminal Case No. 90-1181-K, is imprisonment for life and a fine  
8 of not more than \$8,000,000 and at least ten years of supervised  
9 release. Also pursuant to the provisions of Title 21, United  
10 States Code, Section 841(b)(1)(B), the minimum mandatory penalty  
11 for defendant RONALD PETER LIQUORI, SR., upon conviction for the  
12 offense contained in Count 3 of the indictment in Criminal Case  
13 No. 90-1181-K is imprisonment for at least ten years, a fine of  
14 \$4,000,000 and at least eight years of supervised release.

15 DATED: June 18, 1991.

16 WILLIAM BRANIFF  
17 United States Attorney

18   
19 LAURA J. BIRKMEYER  
20 Assistant U.S. Attorney

21  
22  
23  
24  
25 LJB:km  
26 info\enha\_liq.ljb





JS44

(Rev. 07/89)

## CIVIL COVER SHEET

**FILED**

Nov 28, 2007

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
United States of America DEPUTY

## I (a) PLAINTIFFS

Ronald Peter Liquori, Sr. (26246-198)

## DEFENDANTS

(b) COUNTY OF RESIDENCE OF FIRST LISTED  
PLAINTIFF  
(EXCEPT IN U.S. PLAINTIFF CASES)

San Diego

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Pro Se  
3901 Klein Blvd  
Lompoc, CA 93436

ATTORNEYS (IF KNOWN)

07 CV

2251

H

U.S. Attorney

## II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in  
Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN x IN ONE BOX  
FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |  | PT                         | DEF                        |  | PT                         | DEF                        |
|--|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State                      | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business<br>in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                   | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business<br>in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign<br>Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation   | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE  
JURISDICTIONAL STATUTES UNLESS DIVERSITY).

18 U.S.C. 3582

## V. NATURE OF SUIT (PLACE AN x IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury- Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

## VI. ORIGIN (PLACE AN x IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN  
COMPLAINT:
☐ CHECK IF THIS IS A CLASS  
ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

## VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Hoff

Docket Number 90 CR 1181-H

DATE

SIGNATURE OF ATTORNEY OF RECORD